

By: Representative Baria

To: Judiciary A

HOUSE BILL NO. 1111

1 AN ACT TO CREATE "JASMINE'S LAW"; TO AMEND SECTION 73-11-58,
2 MISSISSIPPI CODE OF 1972, TO EXPAND THE RIGHTS OF PARENTS
3 REGARDING CREMATION OF A CHILD; AND FOR RELATED PURPOSES.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

5 **SECTION 1.** This act shall be known and referred to as
6 "Jasmine's Law."

7 **SECTION 2.** Section 73-11-58, Mississippi Code of 1972, is
8 amended as follows:

9 73-11-58. (1) If a decedent has left no written
10 authorization for the cremation and/or disposition of the
11 decedent's body as permitted by law, any of the following persons,
12 in the order of priority listed below, may authorize any lawful
13 manner of disposition of the decedent's body by completion of a
14 written instrument:

15 (a) The person designated by the decedent as authorized
16 to direct disposition pursuant to Public Law No. 109-163, Section
17 564, as listed on the decedent's United States Department of
18 Defense Record of Emergency Data, DD Form 93, or its successor



19 form, if the decedent died during military service, as provided in
20 10 USC Section 1481(a) (1) through (8), in any branch of the United
21 States Armed Forces, United States Reserve Forces or National
22 Guard.

23 (b) The surviving spouse.

24 (c) A surviving child who is at least eighteen (18)
25 years of age.

26 (d) A grandchild who is at least eighteen (18) years of
27 age.

28 (e) Either surviving parent, if the parents are married
29 to each other. However, if the parents are not married to each
30 other, both parents, regardless of custodial rights, must grant
31 permission to cremate.

32 (f) A surviving sibling who is at least eighteen (18)
33 years of age.

34 (g) A person acting as a representative of the decedent
35 under a signed authorization of the decedent.

36 (h) The guardian * * * of the decedent at the time of
37 the decedent's death, if a guardian has been appointed, only if
38 specific written authority to cremate is given to the guardian by
39 (i) either surviving parent, if the parents are married to each
40 other, or (ii) both parents, regardless of custodial rights, if
41 the parents are not married to each other.

42 (i) A person in the class of the next degree of
43 kinship, in descending order, who, under state law, would inherit



44 the decedent's estate if the decedent died intestate and who is at
45 least eighteen (18) years of age.

46 (j) A person who has exhibited special care and concern
47 for the decedent and is willing and able to make decisions about
48 the cremation and disposition.

49 (k) In the case of individuals who have donated their
50 bodies to science or whose death occurred in a nursing home or
51 private institution and in which the institution is charged with
52 making arrangements for the final disposition of the decedent, a
53 representative of the institution may serve as the authorizing
54 agent in the absence of any of the above.

55 (l) In the absence of any of the above, any person
56 willing to assume responsibility for the cremation and disposition
57 of the decedent.

58 (m) In the case of indigents or any other individuals
59 whose final disposition is the responsibility of the state or any
60 of its instrumentalities, a public administrator, medical
61 examiner, coroner, state-appointed guardian, or any other public
62 official charged with arranging the final disposition of the
63 decedent may serve as the authorizing agent.

64 (2) No funeral establishment shall accept a dead human body
65 from any public officer or employee or from the official of any
66 institution, hospital or nursing home, or from a physician or any
67 person having a professional relationship with a decedent, without
68 having first made due inquiry as to the desires of the persons who



69 have the legal authority to direct the disposition of the
70 decedent's body. If any persons are found, their authority and
71 directions shall govern the disposal of the remains of the
72 decedent. Any funeral establishment receiving the remains in
73 violation of this subsection shall make no charge for any service
74 in connection with the remains before delivery of the remains as
75 stipulated by the persons having legal authority to direct the
76 disposition of the body. This section shall not prevent any
77 funeral establishment from charging and being reimbursed for
78 services rendered in connection with the removal of the remains of
79 any deceased person in case of accidental or violent death and
80 rendering necessary professional services required until the
81 persons having legal authority to direct the disposition of the
82 body have been notified.

83 (3) A person who does not exercise his or her right to
84 dispose of the decedent's body under subsection (1) of this
85 section within five (5) days of notification or ten (10) days from
86 the date of the death, whichever is earlier, shall be deemed to
87 have waived his or her right to authorize disposition of the
88 decedent's body or contest disposition in accordance with this
89 section. If, during the aforesaid time period, the funeral
90 director, funeral service practitioner and/or funeral
91 establishment has been provided contrary written consent from
92 members of the same class with the highest priority as to the
93 disposition of the decedent's body, the licensed funeral director



94 or service practitioner or funeral establishment shall act in
95 accordance with the directive of the greatest number of consents
96 received from members of the class. If that number is equal, the
97 funeral director or funeral service practitioner and/or the
98 funeral establishment shall act in accordance with the earlier
99 consent unless the person(s) providing the later consent is
100 granted an order from a court of competent jurisdiction in which
101 the funeral establishment is located.

102 (4) If no consent for the embalming, cremation or other
103 disposition of a dead human body from any of the relatives or
104 interested persons or institutions listed above in subsection (1)
105 is received within ten (10) days of the decedent's death, the
106 coroner for, or other person designated by, the county in which
107 the funeral establishment is located is authorized to sign the
108 consent authorizing the disposition of the decedent's remains.

109 (5) If none of the parties listed above in subsection (1) is
110 financially capable of providing for the cremation, embalming or
111 disposition of a dead human body, the coroner for, or other person
112 designated by, the county in which the funeral establishment is
113 located is authorized to sign the consent authorizing the
114 disposition of the decedent's remains.

115 (6) The licensed funeral director, funeral service
116 practitioner or funeral establishment shall have authority to
117 control the disposition of the remains of a decedent and proceed
118 to recover the costs for the disposition when: (a) none of the



119 persons or parties described above in subsection (1)(a) through
120 (1) assume responsibility for the disposition of the remains, and
121 (b) the coroner or other public official designated in subsection
122 (1)(m) fails to assume responsibility for disposition of the
123 remains within seven (7) days after having been given written
124 notice of the facts. Written notice may be made by personal
125 delivery, United States mail, facsimile or transmission. The
126 method of disposition must be in the least costly and most
127 environmentally sound manner that complies with law, and that does
128 not conflict with known wishes of the decedent.

129 (7) A funeral director, funeral service and/or funeral
130 establishment licensee acting in accordance with this section, or
131 attempting in good faith to act in accordance with this section,
132 shall not be subject to criminal prosecution or civil liability
133 for carrying out the otherwise lawful instructions of the person
134 or persons described in this section.

135 (8) The liability for the reasonable cost of the final
136 disposition of the remains of the decedent devolves upon the
137 individual or entity authorizing the disposition and/or upon the
138 estate of the decedent and, in cases when the county board of
139 supervisors has the right to control the disposition of the
140 remains under this section, upon the county in which the death
141 occurred.

142 **SECTION 3.** This act shall take effect and be in force from
143 and after July 1, 2018.

